CONSTRUCTION SERVICES AGREEMENT

This Agreement is made and entered into on the date fully executed below between the **CITY OF MISSOULA, MONTANA**, a municipal corporation organized and existing under the laws of the State of Montana, 435 Ryman St., Missoula, MT 59802-4297, referred to here as "City," and **406 Gunite, 44765 Back Rd Ronan, MT 59864**, referred to here as "Contractor."

In consideration of the mutual covenants and agreements contained here, the receipt and sufficiency of the same being acknowledged, the parties agree as follows:

1. Purpose: City agrees to hire Contractor as an independent contractor to perform services for City described in the Scope of Work, attached as Exhibit A, and by reference made a part of this agreement.

2. Effective Date: This agreement is effective on the date of its execution.

3. Scope of Work/Task Deadlines: Contractor will perform the work and provide the services in accordance with the requirements of Exhibit A.

4. Payment: City agrees to pay Contractor an amount not to exceed **$105,508** for services performed pursuant to the Scope of Work. Any alteration or deviation from the described work that involves extra costs will be performed by Contractor after written request by the City and will become an extra charge over and above the agreement amount. The parties must agree in writing upon any extra charges.

5. Independent Contractor Status: The parties agree that Contractor, is an independent contractor for purposes of this agreement and the parties agree that Contractor is and shall be an independent contractor when performing services pursuant to this agreement. Contractor is not subject to the terms and provisions of the City's personnel policies handbook and may not be considered a City employee for workers' compensation or any other purpose. Contractor is not authorized to represent the City or otherwise bind the City in any dealings between Contractor and any third parties.

Contractor shall comply with the applicable requirements of the Workers' Compensation Act, Title 39, Chapter 71, MCA, and the Occupational Disease Act of Montana, Title 39, Chapter 71, MCA. Contractor shall maintain workers' compensation coverage for all members and employees of Contractor's business, except for those members who are exempted by law.

Contractor shall furnish the City with copies showing one of the following: (1) a binder for workers' compensation coverage by an insurer licensed and authorized to provide workers' compensation insurance in the State of Montana; or (2) proof of exemption from workers' compensation granted by law for independent contractors.

6. Indemnity and Insurance: To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold the City harmless against claims, demands, suits, damages, losses, and expenses connected therewith that may be asserted or claimed against, recovered from or suffered by the City by reason of any injury or loss, including but not limited to, personal injury, including bodily injury or death, property damage, occasioned by, growing out of, or in any way

arising or resulting from any intentional or negligent act on the part of Contractor or Contractor's agents or employees.

For this purpose, Contractor shall provide City with proof of Contractor's liability insurance issued by a reliable company or companies for personal injury and property damage in amounts not less than as follows:

- Workers' Compensation—statutory
- Employers' Liability—$1,000,000 per occurrence; $2,000,000 annual aggregate
- Commercial General Liability—$1,000,000 per occurrence; $2,000,000 annual aggregate
- Automobile Liability—$1,000,000 property damage/bodily injury; $2,000,000 annual aggregate

The City shall be included or named as an additional or named insured on the Commercial General and Automobile Liability policies. The insurance must be in a form suitable to City.

7. Warranty: Contractor warrants that all services and work will be performed in a good workman-like manner. Contractor acknowledges that he or she will be liable for any breach of this warranty for the lesser of a period of one (1) year from the time services are completed or any warranty described in the Scope of Services.

8. Compliance with Laws: Contractor agrees to comply with all federal, state and local laws, ordinances, rules and regulations, including the safety rules, codes and provisions of the Montana Safety Act in Title 50, Chapter 71, MCA. Contractor agrees to obtain, and maintain for the duration of its work for the City pursuant to this Agreement, a City business license. Contractor acknowledges and agrees that the City will make no payment under this Agreement until a valid City business license has been obtained.

9. Contractors' Gross Receipts Tax: Contractor understands that all contractors or subcontractors working on a publicly funded project are required to pay or have withheld from earnings one percent (1%) of the gross contract price if the gross contract price is Eighty Thousand Dollars ($80,000) or more.

10. Minimum Wage Rates: In accordance with Montana Law (Section 18-2-403, MCA), on contracts for state, county, municipal school construction, heavy highway, or municipal construction, repair, or maintenance work under any of the laws of the state, the Contractor shall give preference to the employment of bona fide Montana residents in the performance of said contract, and shall further pay the standard prevailing rate of wages including fringe benefits and travel allowances in effect as paid in the county or locality in which the work is being performed. The provisions of Section 18-2-409, MCA, requires 50 percent of the workers on the project to be Montana residents.

> The minimum wages, if included as a part of the contract documents, are not controlling except as to the minimum for the purpose of the Davis-Bacon Act; therefore, it is incumbent upon each employer to pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect

and applicable to the county or locality in which the work is being performed. The prevailing wage rate schedule in effect at the time this project is first advertised shall be used throughout the duration of the contract as prescribed in Administrative Rules of Montana (ARM) 24.17.127(1)(c).

"Standard Prevailing Rate of Wages" is defined by Section 18-2-402, MCA, as including wages, fringe benefits for health and welfare and pension contributions, and travel allowance which are paid in the city or locality by other contractors for work of a similar character performed in the county or locality by each craft, classification, or type of worker needed to complete a contract.

In accordance with Montana Law (Section 18-2-422, MCA), each contractor and employer shall maintain payroll records in a manner readily capable of being certified for submission under MCA 18-2-423, for not less than three years after the Contractor's completion of work on this project.

Travel allowance, if applicable, may or may not be all inclusive of "travel" and/or subsistence and travel time due employees. It is incumbent on the employer to determine the amounts due for each craft employed according to the method of computation outlined for each craft where applicable.

To comply with Section 18-2-406, MCA, the Contractor performing work or providing construction services shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.

Per Montana Law, (Section 18-2-407, MCA), any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected under this section must be deposited in the Montana general fund. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

Copies of the current prevailing rate of wages may be obtained from the Montana State Department of Labor and Industry, Labor Standards Division, Helena, Montana.

Any infractions of the Laws of the State of Montana covering labor will be forwarded to the State of Montana, Department of Labor and Industry, Labor Standards Division.

The contractor performing work on a "public works contract" shall not pay less than the latest Montana Labor Standard Provisions minimum wage as determined by the U.S. Secretary of Labor. A copy of said wage rate is attached as part of the contract documents. The provisions of this part do not apply in those instances in which the standard prevailing rate of wages is determined by federal law. "Public works contract" means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for non-construction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of $25,000.

Contractor shall utilize the Montana Statewide Davis-Bacon Heavy Construction Wage Rates included in the Montana Prevailing Wage Rate Schedule for Heavy Construction effective January 22, 2020, which is attached as Exhibit B.

11. Nondiscrimination and Equal Opportunity: Contractor agrees and shall comply with the following Non-Discrimination and Equal Opportunity policies:

NON-DISCRIMINATION

All hiring shall be on the basis of merit and qualification and there shall be no discrimination in employment on the basis of race, ancestry, color, physical or mental disability, religion, national origin, sex, age, marital or familial status, creed, ex-offender status, physical condition, political belief, public assistance status, sexual orientation, or gender identity/expression, except where these criteria are reasonable bona fide occupational qualifications.

EQUAL OPPORTUNITY POLICY

Contractors, subcontractors, sub grantees, and other firms doing business with the City of Missoula must be in compliance with the City of Missoula's Equal Opportunity Policy, and Title 49 Montana Codes Annotated, entitled "Human Rights" or forfeit the right to continue such business dealings.

The City's Equal Opportunity Policy Statement is:

The Mayor of the City of Missoula or the Mayor's designee may adopt an action plan to provide all persons equal opportunity for employment without regard to race, ancestry, color, handicap, religion, creed, national origin, sex, age, sexual orientation, gender identity or expression, or marital status. In keeping with this commitment, we are assigning to all department heads and their staff the responsibility to actively facilitate equal employment opportunity for all present employees, applicants, and trainees. This responsibility shall include assurance that employment decisions are based on furthering the principle of equal employment opportunity by imposing only valid requirements for employment and assuring that all human resource actions are administered on the basis of job necessity.

Specific responsibility for developing, implementing, monitoring and reporting are assigned to the City Personnel staff under the supervision and direction of the Chief Administrative Officer and the Mayor.

It is the policy of the City of Missoula to eliminate any practice or procedure that discriminates illegally or has an adverse impact on an "affected" class. Equal opportunity shall be provided for all City employees during their terms of employment. All applicants for City employment shall be employed on the basis of their qualifications and abilities.

The City of Missoula, to the extent practical, shall ensure that subcontractors and vendors comply with this policy and the City's non-discrimination and equal opportunity requirements found at Chapter 9.64 of the Missoula Municipal Code. Failure of subcontractors and vendors to comply with this policy statement shall jeopardize initial, continued, or renewed funds or future contracting opportunities.

Our commitment is intended to promote equal opportunity in all employment practices and provide a positive program of equal employment for the City of Missoula, its employees, program participants, trainees and applicants.

12. Default and Termination: If either party fails to comply with any condition of this agreement at the time or in the manner provided for, the other party, at its option, may terminate this agreement and be released from all obligations if the default is not cured within ten (10) days after written notice is provided to the defaulting party. Said notice shall set forth the items to be cured. Additionally, the non-defaulting party may bring suit for damages, specific performance, and any other remedy provided by law. These remedies are cumulative and not exclusive. Use of one remedy does not preclude use of the others. Notices shall be provided in writing and hand-delivered or mailed to the parties at the addresses set forth in the first paragraph of this agreement.

13. Modification and Assignability: This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party, which are not contained in this written agreement, may be considered valid or binding. This agreement may not be enlarged, modified or altered except by written amendment signed by both parties hereto. The Contractor may not subcontract or assign Contractor's rights, including the right to compensation or duties arising under this agreement, without the prior written consent of City. Any subcontractor or assignee will be bound by all of the terms and conditions of this agreement.

14. Liaison: The City's designated liaison with Contractor is **Myles Wilson** and Contractor's designated liaison with the City is **Deborah Miller**.

15. Applicability: This agreement and any extensions of it shall be governed and construed in accordance with the laws of the State of Montana.

16. Signing of Contract: The contract may be signed in counterparts and signed electronically by all parties.

IN WITNESS WHEREOF, the parties here have executed this instrument the day and year first above written.

CONTRACTOR:

_____

MAYOR
City of Missoula, Montana

_____
Andrea Davis

ATTEST:

_____
Claire Trimble, City Clerk

APPROVED AS TO FORM:

_____
City Attorney

(SEAL)